

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

Ethel Carol Cleveland Smith,
Plaintiff,
v.
Ralphs Grocery Company,
Defendant.

Case No.: 2:14-cv-00053-JAD-PAL

**Order Denying Plaintiff's Motion to
Remand [Doc. 9]**

Nevadan Ethel Carol Cleveland Smith alleges that she slipped and fell on a puddle of water on the floor of a Food 4 Less grocery store in Clark County, Nevada.¹ She sued Defendant Ralphs Grocery Company dba Food 4 Less, "a foreign corporation or entity," in Nevada state court,² and Ralphs removed the suit to federal court based on diversity.³ Smith now asks the Court to remand her case back to state court because Ralphs' denial of her claim suggests that it values her claim at \$0 and prevents Ralphs from establishing the \$75,000 threshold for diversity jurisdiction.⁴ The Court denies the motion to remand because Smith's alleged past and future medical expenses exceed the \$75,000 threshold.

¹ Doc. 1 at 9.

² *Id.* at 8.

³ *Id.* at 2.

⁴ Doc. 9.

Discussion

“Federal courts are courts of limited jurisdiction.”⁵ There is a strong presumption against removal jurisdiction and “federal jurisdiction must be rejected if there is any doubt as to the right of removal in the first instance.”⁶ Therefore the defendant always has the burden of establishing that removal is proper.⁷ This burden is usually satisfied if the plaintiff claims a sum more than the threshold requirement.⁸ If the amount of plaintiff’s claim is unclear, the defendant must prove that it is more likely than not that the jurisdictional amount has been met.⁹ Defendants may rely upon facts presented in the removal petition and any summary-judgment-type evidence that is related to the amount-in-controversy.¹⁰ Conclusory allegations do not overcome the presumption against removal jurisdiction or satisfy the defendant’s burden of proving the case.¹¹

The defendant does not need to predict the trier of fact’s eventual award with certainty.¹² Where the claims added together show that by a preponderance of the evidence the threshold amount is met, the amount in controversy is sufficient to establish jurisdiction.¹³ The Ninth Circuit, interpreting Nevada Rule of Civil Procedure 8(a), has added the total of any claims “in excess of \$10,000” when assessing whether the amount-in-controversy requirement has been met.¹⁴

Prior to removal, Smith petitioned the state court to be exempted from its mandatory arbitration program for cases with values under \$50,000. In her petition (attached to Ralphs’ petition

⁵ *Kokkonen v. Guardian Life Ins. Co. of America*, 511 U.S. 375, 377 (1994).

⁶ *Gaus v. Miles*, 980 F.2d 564, 566 (9th Cir. 1992).

⁷ *Id.*

⁸ *Id.* (citing *St. Paul Mercury Indem. Co. v. Red Cab Co.*, 303 U.S. 283, 288–99 (1938)).

⁹ *Id.*; *Sanchez v. Monumental Life Ins. Co.*, 102 F.3d 395, 404 (9th Cir. 1996).

¹⁰ *Matheson v. Progressive Specialty Ins. Co.*, 319 F.3d 1089, 1090 (9th Cir. 2003).

¹¹ *Valdez v. Allstate Ins. Co.*, 372 F.3d 1115, 1117 (9th Cir. 2004) (citations omitted).

¹² *Id.*

¹³ *Matheson*, 319 F.3d at 1091.

¹⁴ *Id.*

for removal¹⁵), Smith claims she has already accrued medical bills of \$48,794.82, and her doctor recommends she undergo a future “anterior cervical discectomy and fusion.”¹⁶ Ralphs suggests that this procedure will cost about \$100,000.¹⁷ She also states that treatment remains ongoing, and she represents that her past and future medical expenses and pain and suffering “will clearly be in excess of the \$50,000 limit.”¹⁸ In her complaint, Smith further alleges that her future medical treatment will exceed \$10,000, her physical and mental pain and anxiety exceeds \$10,000, and that her future loss of income and loss of earnings capacity also exceeds \$10,000. All of these filings *by Plaintiff* were provided by Ralphs in support of its petition for removal.¹⁹ When Plaintiffs’ alleged amounts are combined, they exceed \$78,794.82 and thus satisfy the jurisdictional amount in controversy required for this Court’s exercise of jurisdiction.²⁰ It is of no consequence that Ralphs has denied the claim; were that the touchstone, few cases would meet the threshold amount.

Conclusion

Accordingly, for the foregoing reasons it is HEREBY ORDERED that Plaintiff’s Motion to Remand [Doc. 9] is **DENIED**.

DATED: June 18, 2014


JENNIFER A. DORSEY
UNITED STATES DISTRICT JUDGE

¹⁵ See Doc. 1 at 16.

¹⁶ *Id.* at 18.

¹⁷ Doc. 11 at 6.

¹⁸ Doc. 1 at 19.

¹⁹ See generally Doc. 1.

²⁰ See Doc. 1 at 10 & 18.